

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GEORGE AVALOS,

Plaintiff,

v.

MMDEOL INC., et al.,

Defendants.

Case No. 1:20-cv-01548-NONE-SAB

ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE AND
CLOSE CASE AND ADJUST DOCKET TO
REFLECT VOLUNTARY DISMISSAL

(ECF No. 16)

This action was filed on October 30, 2020. (ECF No. 1.) On December 30, 2020, Plaintiff filed a motion for default judgment. (ECF No. 11.) The Court found multiple apparent deficiencies in the motion for default judgment, and on January 12, 2021, the Court ordered Plaintiff to supplement the motion for default judgment to address the issues identified. (ECF No. 12.) On January 15, 2021, Plaintiff filed a response to the Court's January 12, 2021 order. (ECF No. 15.) The filing indicates that in preparing the response, Plaintiff engaged in additional efforts to address all of the Court's concerns, including returning to the subject property to further quantify Defendant's compliance with the requirements of the ADA. (Id.) Plaintiff submits that from review of the property and photographs taken, "it appears that the built up curb ramp at issue in this matter has been replaced with what appears to be [] more facially compliant features." (Id. at 2.) The response also indicates that Plaintiff would request dismissal of this action in a separate filing. (Id.) On January 15, 2021, Plaintiff filed a notice of voluntary

dismissal pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. (ECF No. 16.)

“[U]nder Rule 41(a)(1)(A)(i), ‘a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.’ ” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). The Ninth Circuit has held that Rule 41(a) allows a plaintiff to dismiss without a court order any defendant who has yet to serve an answer or motion for summary judgment. Pedrina v. Chun, 987 F.2d 608, 609 (9th Cir. 1993). “[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no action had been brought, the defendant can’t complain, and the district court lacks jurisdiction to do anything about it.” Commercial Space Mgmt. Co., Inc., 193 F.3d at 1078. In this action, no defendant has filed an answer or other responsive pleading.

Accordingly, the Clerk of the Court is HEREBY DIRECTED to assign a district judge to this case for the purpose of closing the case and then to adjust the docket to reflect voluntary dismissal of this action pursuant to Rule 41(a).

IT IS SO ORDERED.

Dated: January 19, 2021


UNITED STATES MAGISTRATE JUDGE